THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Misc. Writ Petition (S/S) No. 1197 of 2004

Bhupesh Joshi, S/o Sri Anusuya Prasad Joshi
R/O Suvidha Nagara, Rudraprayag.
District Rudraprayag.

... **Petitioner.**

Versus

1. State of Uttaranchal, through the Secretary,
   Law and Justice, Uttaranchal Shasan,
   Dehradun.

2. State Legal Service Authority Uttaranchal Dehradun.

3. Chairman, District Legal Service Authority Rudraprayag/ District Judge, Rudraprayag.

4. Civil Judge (Junior Division)/ Secretary District Legal Service
   Authority, Rudraprayag, District Rudraprayag.

... **Respondents.**

Sri M.C. Kandpal, Sr. Advocate, assisted by Sri S.S. Chaudhary, Adv., learned counsel for the petitioner.
Sri Nanak Chandra Gupta, Learned Standing Counsel for the respondents.

Date September 29, 2006

(Hon'ble B.S. Verma, J.)

By means of this writ Petition, the petitioner has sought a direction of this Court in the nature of certiorari to quash the order dated 1-10-2004 passed by the District Judge/ Chairman, Legal Service Authority Rudraprayag (Annexure No. 6 to the Writ Petition) and direction to the respondents to continue the petitioner on the post of Clerk in the office of the District Legal Service Authority with regular salary.

2. Brief facts giving rise to the writ petition are that the Chairman, District Legal Service Authority Rudraprayag (respondent no.3) published an advertisement dated 17-02-2004, duly signed by the respondent no. 4, inviting applications for

appointment of clerk in the pay scale of Rs. 3050/-- 4590/- in the office of the Respondent no.3. It was provided that the written examination for the said post will be held on 29-2-2004 between 11 a.m. and 2.00 p.m. at District Court Compound Rudraprayag and on the basis of merit, appointment to the post shall be made out of 20 selected candidates to be called for interview. The educational qualification prescribed for the post was Intermediate with a preference to those having graduate degree with knowledge of computer education. According to the petitioner, in pursuance to the said advertisement dated 17-2-2004, the petitioner applied for the post as he was having the degree (B.Sc.) with P.G. Diploma in Computer Application (Annexure No. 2 to the writ petition). According to the petitioner, he was registered in the Employment Office bearing registration no. 207/2003 dated 27-11-2003. On 29-2-2004, the petitioner appeared in the written examination and as per the merit list, he was called for interview on 1.3.2004. The petitioner stood first in the list and thereby he was given appointment to the post of Clerk in the pay scale of Rs. 3050-4590 vide order contained in the letter No. Memo 223/15-9-2003 dated 13-4-2004 issued by the respondent no.3. Consequently, the petitioner joined his duty in the office of the respondent no.3 along with all requisite certificates. According to the petitioner, his work remained satisfactory and there was no complaint against his work and conduct from any corner. On 1-10-2004, the respondent no.3 dispensed with the services of the petitioner thereby the test and interview conducted for appointment of class III employee to the office of the District Legal Service Authority and the consequent appointment letter dated 13-04-2004 were cancelled. It was mentioned in the order that the detailed reasons were given in the Office Notice Board. The appointment of the petitioner is alleged to be proper and according to the procedure, therefore, the act of cancellation of the examination as well as appointment of the petitioner by the respondent no.3 is highly arbitrary and illegal.

The services of the petitioner could not have been terminated except without proper enquiry or show cause notice.

3. The petition was contested by the respondents, who have filed counter-affidavit. It was stated that the petitioner is the next door neighbour not only of the Judgeship but also of the residence of the District Judge and he was running a P.C.O. outside the main-gate of the Judgeship and the petitioner was not the owner of the said P.C.O. It is further stated that the petitioner was associated with few class IV and Class III employees of the Judgeship for a long time. It was further asserted that the petitioner was looking after a vehicle (Marshal Jeep No. UP 07-9713) owned by his father, who is a retired Forest Range Officer. The vehicle was attached with the Telephone Department Rudraprayag on a monthly rental of Rs 18,000/- and therefore the object of the petitioner was not to do any government work with sincerity and he remained indulged in so many nefarious and unwarranted activities and he intended to disturb the peaceful working of the Judgeship in association with the officials.

4. Rejoinder Affidavit was filed by the petitioner on 2-12-2004 stating therein that appointment to Class III & IV employees could be made in view of G.O. No. 5802/36-6-35/E-72 Dated 5.3.1973 on the basis of the names forwarded by the Employment Exchange. It was clarified that in the earlier writ petition, the petitioner had sought direction of Mandamus for allowing the petitioner in service as on 1-10-2004. The present writ petition has been filed with fresh cause of action for restoration of the order dated 1.10.2004 whereby the examination held and appointment given to the petitioner were set aside. It was stated that the petitioner joined the service on 13-4-2004 but without affording opportunity to him, impugned order dated 1-10-2004 was passed, which was the result of the illegal and arbitrary action of

the respondent no.3. It was alleged that the cancellation of appointment letter is against the provision of law and Rules.

6. Supplementary Counter Affidavit was filed on behalf of the respondent no.3 on 20-12-2004 wherein the reply of Rejoinder Affidavit was filed stating therein that the G.O. dated 5.3.1973 has lost its sanctity in view of the Rules framed by the Governor of the U.P. State. It was pressed that the answer books of the candidates were not properly evaluated and the same required re-evaluation. It was stated that was no justification for conducting enquiry before passing the impugned order dated 1.10.2004 as the petitioner did not have the status of a Government employee. A 2001 matter purporting to the petitioner in the capacity of class IV employee was also taken as the stand to contest the writ petition.

7. Lastly, the petitioner has filed Rejoinder Affidavit dated 4.4.2005 stating therein that the selection of the petitioner was made by a Selection Committee comprising the Chairman, Legal Service Authority/District Judge, Secretary of the said Authority, District Magistrate and Special Judicial Magistrate, Rudraprayag as members.

8. Accordingly to the respondents, the petitioner was never allowed to join the duty, therefore, he could not be termed as employee. The vacancy was a short-term vacancy till 29-2-2004. The main reason assigned for cancellation of appointment was that it was made only to give undue and illegal advantage to the petitioner by the then appointing authority without publishing the vacancy in any daily News Paper. The procedure adopted for this appointment was not proper as there was no information to the general public at large. The selection process was not transparent or justified. It was alleged that the petitioner had been given undue favour by the then selecting authority for the reasons best known to

it. Re-evaluation of the answer sheets of the candidates may unfold the truth behind the appointment. It was alleged that there was undue haste in conducting the examination.

9. I have heard learned counsel for both the parties and have gone through the entire material on record including the impugned order dated 1-10-2004.

10. It has been vehemently submitted on behalf of the petitioner that the order dated 1.10.2004 passed by the respondent no.3 is a biased one and no opportunity of hearing was afforded to the petitioner. It was also submitted that the present vacancy was a short term vacancy, therefore, the provisions of Recruitment Rule 2003 as applicable to Class III posts in Uttaranchal vide G.O. No. 1098/Karmik-2/2003-55(35)/2003 dated 31-07-2003 were not attracted.

11. It is not disputed that the vacancy was advertised by the respondent no.3 as short term. In the instant case, although a short counter affidavit was filed on 30-11-2004 by the respondent no.3, but in this affidavit, the allegations made in the writ petition have not been properly replied. The main grievance of the petitioner is that no opportunity was given to the petitioner before taking away his claim for the post. It has not been denied by the respondents that appointment letter (Annexure-4 to the writ petition) was issued in favour of the petitioner and that the petitioner has submitted his joining report dated 17-4-2004 before the Chairman of the District Legal Service Authority/District Judge, Rudraprayag (Annexure-5 to the writ petition). It is clear from a perusal of the Annexure-4 that the petitioner was issued appointment letter vide letter No. Memo 223/XV-9-2003 Dated 13.4.2004 and he filed his joining report on 17.4.2001. The respondent no. 3 does not appear to have taken any action after

receipt of joining report by the petitioner till the passing of the impugned order dated 1-10-2004. No where in the Short Counter Affidavit or the Supplementary Counter Affidavit filed by the respondent no.3, it has been mentioned that the Annexure Nos. 4 and 5 to the writ petitions are not the genuine documents or that they are manufactured ones for the purposes of this Writ Petition. It is very interesting to mention that the respondent no.3 has pressed for re-evaluation of the answer books of the candidates in the Counter Affidavit/Supplementary Affidavit filed by him, but neither any action to that effect was taken by him between the period 13.4.2004 when the appointment letter was issued till the passing of impugned order on 1.10.2004, nor any report to higher authorities appears to have been made. In my considered view, it was well within the competence of the respondent no.3 to have taken proper steps in that regard in case he was of the view that the petitioner was given back door entry in the appointment and out of procedure/Rules. But this was not done at all. Even no opportunity appears to have been afforded to the petitioner, who was indisputably issued appointment letter in his favour.

12. Learned Standing counsel has relied upon the U.P. Procedure For Director Recruitment for Grout 'C' Posts (Outside The Purview of The Uttar Pradesh Public Service Commission) Rules, 1998 and has submitted that the procedure for direct recruitment has been provided under Rule 5 of the said Rules. Relevant extract of Rule 5 reads as under:-

"5. Procedure for direct recruitment-(1) For making direct recruitment the Government shall publish the application form in daily newspapers having wide circulation.

(2) The appointing authority shall invite the applications for direct recruitment in the form published under Sub rule (1) and notify the vacancies in the following manner:

(i) By issuing advertisement in daily newspaper having wide circulation.

(ii) By pasting the notice on the notice board of the officer or by advertising through Radio/Television and other Employment newspapers, and

(iii) By notification vacancies to the Employment Exchange.

(3) The application form shall not be published again while notifying the vacancies under sub-rule (2)"

13. The learned Standing counsel has submitted that since the advertisement was not issued in daily newspapers having wide circulation, the appointment so made is null and void and the respondent no.3 had rightly passed the impugned order. Learned counsel on this point has relied upon the Judgment of the Allahabad High Court in the Case of Pramod Kumar Yadav Vs. State of U.P. and other with other Writ petitions [(1999) I UPLBEC, Page 188], wherein the learned Single Judge of the Allahabad High Court has held that mere fact advertisement of post was not made in newspapers shall not vitiated the appointment made the duly constituted selection committee.

14. It is also not disputed that the respondent No.3 had constituted a Selection Committee in Accordance with law and the Civil Judge (Junior Division)-respondent No.4 was directed to conduct the examination and the petitioner was selected in the examination conducted by the duly constituted Selection Committee.

15. It is not disputed that the vacancy was pasted on the notice board of the Office and the vacancy was also notified to the employment exchange. In these circumstances, at the most it can be said that the appointment was irregular and not illegal. Even if the appointment is treated to be illegal, the illegality was committed by the respondent No.3 and not by the petitioner, therefore, for the fault of appointing authority, the petitioner cannot be punished for no fault on his part.

16. Another ground on which the learned counsel for the petitioner has assailed the impugned order is that the order impugned is stigmatic and no stigmatic order can be passed by the Authority without complying with the principles of natural justice. It is not disputed that in the present case, the petitioner has not been afforded any opportunity of hearing. No show cause notice was issued and thus, there was clear cut violation of principle of natural justice. It is well settled law in the service jurisprudence that no adverse order can be passed without given opportunity of hearing to the person concerned. In the present case, since it is an admitted fact that opportunity of hearing has not been give by the respondent authority prior to passing the impugned order, which is stigmatic in nature, the order is liable to be quashed on this ground alone.

17. Learned counsel for the petitioner has further assailed the impugned order on the ground that the respondent No.3 has no power to review, recall or cancel the order passed by himself earlier without there being any specific provision for the purpose. In the instant case neither there was any complaint from any quarter, nor there was any provision for review, recall or cancel the order passed by the Chairman. No. doubt, inherent power of review or recall is always with the Authority, which has passed the order, but in the absence of any specific provision to that effect, this power could not have been exercised unless or until the order impugned was obtained by mis-representation of fact or by concealing material fact. But this is not the case here. Neither there is any allegation for concealment of material fact, nor there any allegation that the order of appointment was obtained by misrepresentation of fact. In these circumstances, it was not proper for the Chairman-respondent No.3 review or recall or cancel the appointment order, which was passed by the same authority.

18. Before parting with the writ petition, it is pertinent to mention that the petitioner Bhupesh Joshi was not permitted by the respondent No.3 to continue on the post of clerk in the establishment of District Legal Service Authority, Rudraprayag, therefore, he shall not be liable to payment of salary admissible on that post. It is, however, made clear that if the petitioner had actually worked for any specific period prior to the passing of the impugned order, he shall be entitled for payment of salary such period as per Rules.

19. For the reasons recorded above, the writ petition deserves to be allowed.

20. The writ petition is allowed and the impugned order dated 1-10-2004 passed by the respondent No.3 (Annexure No.6 to the writ petition) is quashed. No order as to costs.

21. It the said post of Clerk, District Legal Service Authority Rudraprayag is still in existence, the petitioner shall be permitted to continue on that post.

22. The writ petition is allowed. The order under challenge, passed by respondent No.3-Chairman, District Legal Service Authority, Rudraprayag is set aside. The respondent No.3 is directed to proceed in the matter as observed above.

No order as to costs.

(B.S. Verma,J)

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